IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 170 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANJAYKUMAR KRISHNAKANT DAVE

Versus

VAISHALI @ INDU SANJAUKUMAR DAVE

Appearance:

1. Civil Revision Application No. 170 of 2003

MR MUKUND M DESAI for Petitioner No. 1

MR GAURANG H BHATT for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 16/07/2003

ORAL JUDGEMENT

Sanjaykumar Krishnakant Dave, applicant, has filed this application against interim order dated 27.3.2003 passed by the Family Court, Ahmedabad in Civil

Misc. Application No. 1 of 2003. The learned Judge by her impugned order has held that the applicant Sanjaykumar Krishnakant Dave, husband, is directed to pay Rs. 750/- per month each to the the opponent wife and her two children totaling to Rs. 2,250/- from the date of the application Exh. 8 of the Family Suit No. 524 of 2001 i.e. 28.12.2001 till the final hearing and disposal of that Suit. The earlier order dated 24.4.2002 fixing maintenance of Rs. 2500/- per month to be given to the opponent wife passed below Exh. 8 in Family Suit No. 524 of 2001 is reviewed and modified to that extent.

2. This matter was placed for hearing before this Court and I have called both the parties in the Chamber individually and collectively and made an effort to settle the dispute but unfortunately the dispute could not be settled amicably. Hence, I am deciding this matter on merits.

3. The facts giving rise to this application are as under:

3.1 The applicant Sanjaykumar Krishnakant Dave married with the respondent Vaishali alias Indu Sanjaykumar Dave on 11.12.1991. Out of their wedlock, one daughter named Komal was born on 23.1.1993 and one boy named Nirav was born on 11.3.1996. Thereafter, differences and dispute arose between the parties and ultimately in July, 2001 the applicant husband has filed Hindu Marriage Petition No. 524 of 2001 before the Family Court, Ahmedabad, under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights. The opponent wife has filed reply dated 28.12.2001.

3.2 During the pendency of the said matter, the opponent wife preferred an application Exh. 8 for interim alimony. The applicant-husband filed reply to the application Exh. 8. The learned judge, Family Court No. 2, Ahmedabad, passed order dated 24.4.2002 fixing Rs. 2500/- as maintenance in favour of the opponent wife and against the applicant husband.

3.3 Being aggrieved and dissatisfied with the said order, the applicant preferred Civil Revision Application No. 1197 of 2002 before this Court and this Court (Coram: P.B. Majmudar, J) was pleased to dispose of the said application by his order dated 22.11.2002. In that order the Court has stated that the parties produce evidence before the Family Court, Ahmedabad.

3.4 Pursuant to the aforesaid order of this Court,

the applicant produced necessary evidence, particularly, pay slip showing his salary, Dearness Allowances and other allowances which he was getting from the Government.

3.5 After producing the said evidence, again the matter was heard by the Family Court, Ahmedabad, and as indicated above, the Family Court, Ahmedabad, came to the conclusion that the gross salary of the applicant is Rs. 5,320/- and out of that a sum of Rs. 559/- is deducted towards G.P.F. contribution and Rs. 20/- for professional tax. Thus, the net salary of the applicant is Rs. 4,741/-. Out of the said amount of Rs. 4,741/-, the learned Judge has directed the applicant to pay Rs. 750/- per month each to the opponent wife and her two children in all a sum of Rs. 2,250/-.

3.6 Being aggrieved and dissatisfied with the aforesaid interim order of the Family Court, the applicant husband has filed this Civil Revision Application on 19.5.2003. When the matter was placed for hearing on 20.5.2003, as this was filed against an interim order and also against maintenance, this Court was not prepared to admit the matter but ultimately as the learned advocate for the applicant requested that if this Court issues notice, there is a chance of settlement of the matter amicably by the parties and therefore this Court issued notice for settlement of the matter.

3.7 When the matter was earlier placed for hearing , the opponent wife pointed out that the applicant is liable to pay Rs. 40,500/- as arrears of maintenance to her which is due and payable to the opponent wife by the applicant. It was pointed out that the applicant husband has deposited a sum of Rs. 5000/- in the Family Court and pursuant to the order of this Court dated 17.6.2003 a sum of Rs. 10,000/- has been deposited before this Court.

4. Mr. Mukund Desai, learned advocate for the applicant has vehemently argued the matter and stated that the Family Court has not fixed the maintenance amount in accordance with law and as per the evidence produced by the parties. He has stated that the applicant husband is earning Rs. 5320/- and the amount of maintenance of Rs. 2,250/- to be given to the opponent wife and her children is very excessive and no amount is left for the husband for his maintenance. He has stated that the applicant husband has also to look after his mother and father.

4A The learned counsel for the applicant has also

submitted that in view of the earlier order, a house of the applicant husband has been given to opponent wife for temporarily staying during the pendency of the proceedings. This was an interim order and at the final hearing stage the applicant husband can raise a contention about the same as to whether the opponent wife is entitled to the said house or not when the Court will finally decide this issue.

5. Mr. G.H. Bhatt, learned counsel for the opponent wife, has stated that this revision application is filed against an interim order of the Family Court, the Revision Application is not maintainable at law as per the amendment made to Section 115 of the C.P.C. He further submitted that in any view of the matter, the Family Court has passed order of maintenance after considering the evidence that the applicant husband is earning salary of Rs. 5,320/- and also the fact that the opponent wife has to maintain herself and her two children. Therefore, the amount of Rs. 2,250/- awarded by the Family Court to the opponent wife is absolutely just and legal and this Court may not interfere with the interim order of the Family Court.

6. I have heard learned counsel for the parties. Without entering into the question as to whether the Revision Application is maintainable at law and without expressing any opinion on merit of the matter, I am of the view that the learned Judge has, after considering the evidence on record and also after considering the income of the applicant husband, fixed the interim maintenance. If the applicant produces further evidence regarding his liability then it will be open for the Family Court to fix the maintenance at the final disposal of the matter.

7. In this case, as I have stated above, the marriage of the parties has been solemnised somewhere in the year 1991 and they have two children. It appears that the dispute has arisen from 1996 onwards and the matter is pending before the Family Court. Therefore, I am of the view that if the Family Court decides the matter finally, it will be in the interest of the parties and the parties can know the legal position in this regard. Meanwhile, the interim order passed by the Family Court will continue till final disposal of the matter. The Family Court will also consider as to whether the wife is entitled to stay in the house given by the applicant husband which was part of interim order. While deciding finally, the Family Court will also consider the contention which has been raised by the

learned counsel for the applicant before this Court which I have kept open. I have not decided the same while disposing of this Revision Application at this stage. The Family Court will hand over Rs. 5,000/- which has been deposited by the applicant husband to the opponent wife. The Registry of this Court is also directed to handover Rs. 10,000/- which has been deposited by the applicant husband before this Court to the opponent wife after due verification. Regarding Rs. 15,000/- remained payable by the applicant husband to the opponent wife, I hope and trust that the Family Court will decide the issue and give necessary direction to the applicant in connection with the arrears of maintenance. I request the Family Court to decide the matter at an early date preferably by 31.10.2003.

8. In view of the same, this Civil Revision Application is disposed of accordingly with no order as costs.. The Registry is directed to send necessary writ to the Family Court.

(K.M. MEHTA, J)
(pkn)